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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 4468 OF 2007

IN

FIRST APPEAL NO. 1533 OF 2006

Mrs. Nirmala Devi Ramswaroop Makkar Gaud. ... Applicants.

Vs.

The Dy. Municipal Commissioner, B.M.C.Mumbai and Ors. ...Respondents.

Ms. Farhat Sheikh for the applicants.

Ms. Mamta Shah i/by Mr. G.V. Murti for respondent No.2.

Mr. J.J. Xavier for the BMC.

CORAM : ANOOP V. MOHTA,J.

DATED : 3rd September, 2007

P.C.

1. First of all one thing is very clear that the applicant, original plaintiff is not a senior citizen. Her undisputed age is 55 years.

2. While admitting the first appeal on 14th February, 2007, on Civil Application No. 4482 of 2005, after hearing both the parties, the Court has passed the following order:-

. " Heard Advocates appearing for the parties. Suit structure is already demolished. There is no prima facie case to grant any relief during the pendency of the Appeal. Application is rejected."

3. The applicant, however, moved this present application dated 24th August, 2007 and submitted the same grounds to consider the civil application on merits and also prayed to consider various documents and evidence on record and to pass appropriate orders basically allowing the applicant to construct or put on temporary shed on the same place. In view of this, basic as there is no change of circumstances and as the facts remain that the suit structure was demolished during the pendency of the suit. Though there was specific directions of reconstructions which was not granted by the trial court. Unless the matter is finally decided, at this stage, such application on the same facts and circumstances, just cannot be reconsidered again.

4. However, considering the averments made that the applicant being unemployed and has to look after four children and she had been residing in the said hut / premises at least last 35 years, uninterruptedly and undisturbly, at this stage of the proceedings, no

relief whatsoever can be granted except to fix the matter for final hearing.

5. The learned counsel appearing for the applicant makes a statement that the appeal is ready. There is no objection of any kind. The paper book is also filed on record.

6. In view of this, the appeal be listed on board for final hearing after six weeks. The applicant to file synopsis and written notes of arguments. The Civil Application is, therefore, disposed of, accordingly.

(ANOOP V. MOHTA, J.)